

April 10, 2020



Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed revisions to Circuit Rule 3-2, Representation Statement; Circuit Rule 32-2, Oversized Briefs; Circuit Rule 30-1, Excerpts of Record; and minor revisions to various other Rules related to the Excerpts of Record. The proposed changes to the Excerpts of Record Rules are extensive and are intended to simplify and clarify the purpose and requirements of the Excerpts, and to standardize their format and citation. The remaining proposed Rule changes are primarily designed to clarify the purpose and importance of the Representation Statement, and to limit and clarify the filings of motions requesting permission to file oversized briefs. If ultimately approved by the Court, these rules would become effective December 1, 2020.

Please direct comments to Molly C. Dwyer, Clerk of Court at [Molly\\_Dwyer@ca9.uscourts.gov](mailto:Molly_Dwyer@ca9.uscourts.gov), and Susan V. Gelmis, Chief Deputy Clerk at [Susan\\_Gelmis@ca9.uscourts.gov](mailto:Susan_Gelmis@ca9.uscourts.gov). Comments must be submitted no later than July 31, 2020.

## **CIRCUIT RULE 3-2. REPRESENTATION STATEMENT**

- (a) No FRAP 12(b) Representation Statement is required in: (1) criminal cases; (2) appeals arising from actions filed pursuant to 28 U. S. C. §§ 2241, 2254, and 2255; and (3) appeals filed by pro se appellants.
- (b) In all other cases, a party filing an appeal shall attach to the notice a Representation Statement that identifies all parties to the action along with the names, addresses and telephone numbers of their respective counsel, if any. (Rev. 7/94)

### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 3-2

The representation statement is critically important. It governs the caption; the determination as to which parties and counsel will be added to the docket for the appeal; who will receive notice of the appeal and initial schedule; and who will be required or permitted to submit filings in the appeal. When any party or counsel is not accurately listed in the docket, significant problems, such as lack of notice or waiver of arguments, can result. Because the representation statement is filed by appellants (and none is required in pro se or criminal appeals), the Court expects and requires that all parties will carefully review the Court's caption and listing of counsel and parties at the outset of every appeal and will notify the Court immediately of any corrections or updates. (New 12/1/2020)

## CIRCUIT RULE 32-2. REQUESTS TO EXCEED THE PAGE OR TYPE-VOLUME LIMITS

- (a) **Motions:** The Court ~~looks with disfavor~~<sub>s</sub> ~~on~~ motions to exceed the applicable page or type-volume limits. Except in capital cases, sSuch motions will be granted only upon a showing of diligence and substantial extraordinary and compelling need, such as a multi-defendant criminal case involving a lengthy trial. A motion for permission to exceed the applicable page or type-volume limits must be filed on or before the brief's due date and must be accompanied by a declaration stating in detail the reasons for the motion. (Rev. 12/1/20)

Any such motions shall be accompanied by a single copy of the brief that the applicant proposes to file and a [Form 8](#) certification as required by Circuit Rule 32-1 as to the word count. The cost of preparing and revising the brief will not be considered by the Court in ruling on the motion.

- (b) **When Longer Briefs are Allowed Automatically:** If no order lengthening the page or type-volume limit has been obtained previously, the Court will allow an extra 5 pages or 1,400 words to separately represented parties that are filing a joint brief. That same longer limit also will be provided to a party or parties that file a single brief answering or replying to either (1) multiple briefs or (2) a longer joint brief filed pursuant to this subsection. Briefs submitted under this subsection must be accompanied by [Form 8](#). *(New 7/1/16)*

### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 32-2

Motions to exceed the word limit will not be granted absent extraordinary and compelling circumstances. The Court already provides more generous word limits than provided by FRAP and most other Circuits. In almost all cases, the limits provided suffice even for multiple or complex issues. Most overlength briefs could be shorter and unnecessarily burden the Court.

*If the Court does not grant a motion for leave to file a longer brief, or grants the motion only in part, the Court ordinarily will provide the party or parties ~~a reasonable interval~~ 7 days after the entry of the order to file a compliant brief as directed by the Court. Any order that decides a motion will also make adjustments to the due date(s) for any further briefing.*

*Rule 32-2(b) encourages separately represented parties to file a joint brief to avoid burdening the Court with repetitive presentations of common facts and issues. The routine lengthening of page or type-volume provided by the rule is intended to accommodate the additional length that may be necessary to permit preparation of a joint brief. A litigant responding to the opposing party's brief as well as an amicus curiae brief filed under FRAP 29(a) is also eligible to file a longer brief automatically.*

If a brief that exceeds the usual length limits is submitted by a party or parties ineligible for relief under Rule 32-2(b), the Clerk will ~~provide the parties with an interval within which to file~~reject the brief if it is not accompanied by a motion under Rule 32-2(a). (Rev. 1/1/07; Rev. 7/1/16; Rev. 12/1/20)

## CIRCUIT RULE 30-1. THE EXCERPTS OF RECORD

### 30-1.1. Purpose

The Ninth Circuit requires the parties to file Excerpts of Record instead of the Appendix prescribed by FRAP 30. The primary purpose of the excerpts is to compile for the Court all parts of the record, and only those parts of the record, that are relevant and useful to the Court in deciding the appeal.

For purposes of these rules, the terms “Excerpts” and “Excerpts of Record” refer to any type of excerpts submitted by any party, including Supplemental Excerpts and Further Excerpts.

#### *Advisory Committee Note to Rule 30-1.1*

*The Excerpts of Record should be a well-organized and accessible compendium of all the documents in the record that are necessary to understand and decide the issues on appeal. Although the Court has access to most of the district court record via PACER, that access is time consuming, and citations to the record serve as a distraction when reading the briefs. The parties should not expect the Court to search through the district court record for the documents that support their arguments on appeal. Therefore, citations directly to the record are not permitted except for purely background information that is undisputed and provided only for general context.*

### 30-1.2. Requirements

(a) The appellant or petitioner shall submit Excerpts of Record when submitting the opening brief.

(b) The appellee or respondent shall submit Supplemental Excerpts of Record when submitting the answering brief only if the brief refers to documents not included in the initial Excerpts, or if no Excerpts of Record were filed because the appellant or petitioner is exempt pursuant to Circuit Rule 30-1.3.

(c) The appellant or petitioner shall submit Further Excerpts of Record when submitting the reply brief only if the brief refers to documents not included in the Excerpts or Supplemental Excerpts.

(d) All excerpts shall be separate from the brief and submitted electronically at the same time as the brief unless the filing party is exempt from the electronic-filing requirement.

(e) On the same day the excerpts are submitted electronically, the filing party shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of paper copies of the excerpts to the Court until directed by the Clerk to do so.

(f) If the filing party is exempt from the electronic-filing requirement, the filing party shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties.

(g) Should the Court consider a case en banc, the Clerk will require counsel to submit additional paper copies of the excerpts.

(h) In any petition for review challenging an order of removal in an immigration case, neither party need file Excerpts of Record.

### 30-1.3. No Excerpts Required for Pro Se Party

A party proceeding without counsel need not file excerpts. Counsel for appellee or respondent must file Supplemental Excerpts of Record that contain all of the documents that comprise the initial Excerpts of Record as well as the documents that are cited in the answering brief.

### 30-1.4. Contents of the Excerpts of Record

(a) Volume 1 of the Excerpts of Record shall include all decisions being appealed or collaterally challenged, whether oral or written, final or interim. Unless the entire set of excerpts will be submitted in a single volume of no more than 300 pages, Volume 1 of the Excerpts of Record shall not include any other material. This requirement applies to Volume 1 of any Supplemental or Further Excerpts of Record that contain such decisions not included in the initial Excerpts. The

documents in the first volume of excerpts shall ordinarily be arranged by file date in reverse chronological order.

(b) Except as provided in subsection (c), additional volumes of any excerpts shall not include any decisions referred to in subsection (a), but shall include all other parts, and only those parts, of the record that are relevant to deciding the appeal. The documents contained in these volumes of excerpts ordinarily shall be arranged in reverse chronological order. If documentary trial exhibits, such as written materials and photographs capable of production in PDF format, are relevant to deciding the appeal, they shall be included in the Excerpts of Record. These exhibits may be placed at the end of the final volume of unsealed Excerpts of Record (just before the docket sheet) or, if appropriate, in the final volume of sealed Excerpts. For instructions concerning submission of exhibits that are not capable of transmission in PDF format, see Circuit Rule 27-14.

(c) When any Excerpts of Record includes documents: (1) that are required to be sealed pursuant to statute or rule and submitted under Circuit Rule 27-13(d); or (2) that are being submitted provisionally under seal pursuant to Circuit Rule 27-13(e) or (f); those documents shall be submitted in a separate, final volume(s) of the excerpts. The documents contained in sealed or provisionally sealed volumes ordinarily shall be arranged in reverse chronological order. Pre-sentence reports and related sealed sentencing memoranda shall not be included in the excerpts. *See* Circuit Rule 27-13(d).

(d) On appeal from a District Court, Bankruptcy Appellate Panel, Bankruptcy Court, or Tax Court case, the notice of appeal and lower court docket sheet shall be included at the end of the last volume in the non-sealed initial Excerpts of Record.

*Advisory Committee Note to Rule 30-1.4*

*Volume 1 of the Excerpts of Record ordinarily should include:*

- (a) the judgment or interlocutory order appealed from;*
- (b) any other orders or rulings, including minute orders, sought to be reviewed;*
- (c) where an appeal challenges any ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding, or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel on which the assignment of error is alleged to rest;*
- (d) the entire sentencing transcript in any criminal appeal challenging the sentence;*
- (e) any jury instruction given or refused that presents an issue on appeal; and*

*(f) any relevant state court decisions in a habeas corpus proceeding.*

*Circuit Rule 28-2.8 requires every assertion in briefs regarding matters in the record to be supported by a citation to the Excerpts of Record. Excerpts therefore must include, at a minimum, all documents cited by the briefs except for undisputed facts offered only for general background.*

*Legal memoranda and briefs ordinarily are not relevant to the issues on appeal and, therefore, should be excluded from the excerpts. They may be relevant if a party asserts that an issue was waived, forfeited, or not exhausted, or in other similar circumstances.*

*If the briefs cite only certain pages of a long transcript or other document, parties may elect to include only portions of the transcript or document. But the parties should provide enough surrounding pages to provide relevant context.*

*If the brief is accompanied by a motion to withdraw pursuant to *Anders v. California*, the initial Excerpts of Record shall include the complete transcripts for the plea hearing and sentencing hearing. See Circuit Rule 4-1(c)(6).*

*If the brief raises issues requiring consideration of trial exhibits, whether admitted or excluded, it is counsel's responsibility to provide those exhibits to the Court as part of the excerpts (if they are capable of submission in PDF format) or via separate transmission to the Court pursuant to Circuit Rule 27-14.*

*The Court prefers excerpts that are organized in reverse chronological order (subject to the provisions relating to the contents of first and sealed volumes), beginning with the most recently filed document or set of documents. For this purpose, transcripts, including trial transcripts, should be placed by hearing date, and hearings that span multiple transcripts should appear in chronological order for that hearing or trial, using the first day of the hearing or trial as the relevant date. Alternative organization of the excerpts is acceptable if better suited to a particular case.*

### 30-1.5. Index and Format

(a) Each set of Excerpts of Record shall be accompanied by a separately bound index of all documents contained in all volumes of the set. The index shall list each document in order, including a citation to where the document may be found in the lower court record, and its location in the volume and page number in the excerpts.



When listing the documents in the index, parties should provide descriptive labels. For example, "Exhibit 12 - 2018 Deposition of Jeanne Smith" is more helpful than "Exhibit 12 to motion for summary judgment."

(b) No volume may exceed 300 pages, including the caption page.

(c) The pages of each set of excerpts shall be numbered consecutively across all volumes in that set except for the Index Volume, which shall be separately paginated if at all, and the caption pages of each volume shall be included in the numbering of the excerpts. Page numbers shall be prominently visible in both the electronic and paper versions of the excerpts, but the page number does not need to appear on the caption pages.

(d) Each volume must contain a caption page styled as described in FRAP 32(a), except that the wording "Excerpts of Record" (or "Supplemental Excerpts of Record" or "Further Excerpts of Record") shall be substituted for "Brief" for each party submitting the excerpts. The caption page of each volume, including the index, shall include the volume number ("Volume 2 of 6" or "Index" for example).

(e) The paper copies of all volumes, including the Index, shall be bound securely on the left. Paper copies shall be printed on letter-sized light-colored paper with black ink or color ink where appropriate and the caption pages shall be white. Paper copies of any excerpts may be printed on both sides of the paper, but only if the method of binding allows each volume to lie completely flat when open, such as comb, spiral, coil, or wire binding, and the weight of the paper is sufficient to prevent bleeding through when marked on one side in ink or highlighter.

### 30-1.6. Citation to the Excerpts of Record

Parties shall cite to the initial Excerpts of Record in the following format: [volume number]-ER-[page number(s)]. If only one volume exists, the volume number shall be omitted. Multi-volume examples: 1-ER-12, 4-ER-874–76. Single-volume example: ER-26–32. The same format applies to Supplemental Excerpts of Record except that "SER" applies rather than "ER." The same format applies to Further Excerpts of Record except that "FER" applies rather than "ER." Multiple parties on the same side of an appeal who are submitting separate excerpts must include a unique identifier in the citation, such as 1-JonesER-59.

### 30-1.7. Prisoner Appeals Without Counsel

In cases involving appeals by prisoners not represented by counsel, the clerk of the district court shall, within 21 days from the receipt of the prisoner's written request, forward to the prisoner copies of the documents comprising the Excerpts of Record so that the prisoner can prepare the briefs on appeal. If the prisoner was granted leave to proceed in forma pauperis at the district court or on appeal, the copies will be produced at no charge to the prisoner.

## **CIRCUIT RULE 17-1. EXCERPTS OF RECORD ON REVIEW OR ENFORCEMENT OF AGENCY ORDERS**

Review of agency decisions shall be in accordance with FRAP 17, except that preparation and filing of the Excerpts of Record in such cases shall be in accordance with Circuit Rule 30-1. Each reference in Circuit Rule 30-1 to the district court and to the clerk of the district court shall be read as a reference to the agency. No Excerpts of Record are required in a petition for review of an order by the Board of Immigration Appeals. (New 12/1/20)

### **17-1.1 through 17-1.9 [Abrogated 12/1/20]**

#### **17-1.1. Purpose**

~~Parties are required to prepare excerpts of record unless Circuit Rule 17-1.2 applies. The purpose of the excerpts of record is to provide each member of the panel with those portions of the record necessary to reach a decision. The parties shall ensure that, in accordance with the limitations of Circuit Rule 17-1, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts. (Rev. 12/1/09)~~

#### **17-1.2. Parties Exempt from Excerpts Requirement**

- ~~(a) — Unrepresented Parties: Petitioners and respondents proceeding without counsel need not file excerpts, supplemental excerpts and further excerpts of record.~~
- ~~(b) — Petitioners challenging a Board of Immigration Appeals order need not file the initial excerpts and further excerpts; respondent need not file supplemental excerpts. (New 1/1/05; Rev. 12/1/09)~~

#### **Cross Reference:**

- ~~• Circuit Rule 28-2. Contents of Briefs on page 110, specifically, 28-2.7. Addendum to Briefs on page 111~~

#### **17-1.3. Petitioner's Initial Excerpts of Record**

~~The petitioner shall, unless exempt pursuant to Circuit Rule 17-1.2, submit the initial excerpts of record at the time petitioner's opening brief is submitted. The excerpts shall be separate from the brief and submitted electronically unless petitioner is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, petitioner shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If petitioner is exempt from the electronic filing requirement, petitioner shall file 3 paper copies of the excerpts at the time the brief is submitted, but separately from the brief, and serve 1 paper copy on each of the other parties. (Rev. 12/1/09; 6/1/19; 12/1/19)~~

#### **17-1.4. Required Contents of the Excerpts of Record**

- ~~(a) — When review or enforcement of an agency order is sought, the excerpts of record shall include:~~
- ~~(i) — the agency docket sheet, if there is one;~~
  - ~~(ii) — the agency order to be reviewed;~~
  - ~~(iii) — any opinion, findings of fact or conclusions of law filed by the agency, board, commissioner or officer which relates to the order to be reviewed;~~
  - ~~(iv) — except as provided in Circuit Rule 17-1.4(b), where an issue raised in the petition is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;~~
  - ~~(v) — except as provided in Circuit Rule 17-1.4(b), where an issue raised in the petition is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;~~
  - ~~(vi) — where an issue raised in the petition is based on a written exhibit (including affidavits), those specific portions of the exhibit necessary to resolve the issue;~~
  - ~~(vii) — (vii) any other specific portions of any documents in the record that are cited in petitioner's briefs and are necessary to the resolution of an issue on review; and (Rev. 12/1/09)~~
  - ~~(viii) — where the petition is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on review.~~
- ~~(b) — In addition to the items required by Circuit Rule 17-1.4(a), where the petition seeks review of an agency adjudication regarding the grant or denial of benefits, the excerpts of record shall also include the entire reporter's transcript of proceedings before the administrative law judge. (Rev. 1/1/05)~~

#### **17-1.5. Items Not to Be Included in the Excerpts of Record**

~~The excerpts of record shall not include briefs or other memoranda of law unless necessary to the resolution of an issue on review, and shall include only those pages necessary therefor. (Rev. 12/1/09)~~

### **Cross-Reference:**

- ~~Circuit Rule 17-2. Sanctions for Failure to Comply with Circuit Rule 17-1 on page 57~~

### **17-1.6. Form of the Excerpts of Record**

~~If the excerpts exceed 75 pages, the first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, and any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the agency, board, commissioner or officer that relate to the orders to be reviewed. All additional documents shall be included in subsequent volumes of the excerpts. (New 7/1/07)~~

~~The form of the excerpts shall otherwise be governed by Circuit Rule 30-1.6, with references in Circuit Rule 30-1.6 to appellant and the district court to be read as references to petitioner and agency, respectively. (Rev. 7/1/07)~~

### **17-1.7. Respondent's Supplemental Excerpts of Record**

~~The provisions for respondent's supplemental excerpts shall be governed by Circuit Rule 30-1.7, with references in Circuit Rule 30-1.7 to appellee to be read as references to respondent.~~

### **17-1.8. Further Excerpts of Record**

~~The provisions for further excerpts shall be governed by Circuit Rule 30-1.8, with references in Circuit Rule 30-1.8 to appellant to be read as references to petitioner.~~

### **17-1.9. Additional Copies of the Excerpts of Record**

~~Should the Court of Appeals consider a case en banc, the Clerk of the Court of Appeals will require counsel to submit an additional 10 copies of the excerpts of record. (Rev. 7/95; 12/1/19)~~

## **CIRCUIT RULE 17-2. SANCTIONS FOR FAILURE TO COMPLY WITH CIRCUIT RULE 17-1**

*[Abrogated 12/1/20]*

~~If materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the Court may take one or more of the following actions:~~

- ~~(c) — strike the excerpts and order that they be corrected and resubmitted;~~
- ~~(d) — order that the excerpts be supplemented;~~
- ~~(e) — if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or~~

~~(f) — impose monetary sanctions.~~

~~Counsel will be provided notice and have an opportunity to respond before sanctions are imposed.~~

## CIRCUIT RULE 28-2. CONTENTS OF BRIEFS

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### 28-2.8. Record References

Every assertion in the briefs regarding matters in the record, except for undisputed facts offered only for general background, shall be supported by a reference to the location in citation to the Excerpts of Record where the matter is to be found. (Rev. 7/1/98; 12/1/09; 12/1/20)

### CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 28-2.8

*Sanctions may be imposed for failure to comply with this rule, particularly with respect to record references. See Mitchel v. General Elec. Co., 689 F.2d 877 (9th Cir. 1982). Because every record-related citation other than undisputed facts offered only for general background shall be supported by the Excerpts of Record, citations directly to the underlying record are prohibited. (Rev. 12/1/20)*

## CIRCUIT RULE 30-2. SANCTIONS FOR FAILURE TO COMPLY WITH CIRCUIT RULE 30-1

*[Abrogated 12/1/20]*

~~If materials required to be included in the excerpts under these rules are omitted, or irrelevant materials are included, the Court may take one or more of the following actions:~~

~~(g) — strike the excerpts and order that they be corrected and resubmitted;~~

~~(h) — order that the excerpts be supplemented;~~

~~(i) — if the Court concludes that a party or attorney has vexatiously or unreasonably increased the cost of litigation by inclusion of irrelevant materials, deny that portion of the costs the Court deems to be excessive; and/or~~

~~(j) — impose monetary sanctions.~~

~~Counsel will be provided notice and have an opportunity to respond before sanctions are imposed.~~

## **CIRCUIT RULE 30-1. THE EXCERPTS OF RECORD**

### **30-1.1. Purpose**

- (a) In the Ninth Circuit the appendix prescribed by FRAP 30 is not required. Instead, Circuit Rule 30-1 requires the parties to prepare excerpts of record. The purpose of the excerpts of record is to provide each member of the panel with those portions of the record necessary to reach a decision. The parties should ensure that in accordance with the limitations of Circuit Rule 30-1, those parts of the record necessary to permit an informed analysis of their positions are included in the excerpts. (*Rev. 12/1/09*)
- (b) Excerpts of record must be filed in all cases, unless Circuit Rule 30-1.2 applies. The requirements for petitions for review and applications for enforcement of agency decisions are set forth at Circuit Rule 17-1. In appeals from district court decisions reviewing agency actions, the excerpts of record shall comply with Circuit Rule 30-1 and shall include as well the materials required by Circuit Rule 17-1. (*Rev. 12/1/09*)

### **30-1.2. Unrepresented Litigants**

Appellants and appellees proceeding without counsel need not file the initial excerpts, supplemental excerpts or further excerpts of record described in this section. (*New 1/1/05; Rev. 12/1/09*)

### **30-1.3. Appellant's Initial Excerpts of Record**

The appellant shall, unless exempt pursuant to Circuit Rule 30-1.2, submit the initial excerpts of record at the time appellant's opening brief is submitted. The excerpts shall be separate from the brief and submitted electronically unless appellant is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, appellant shall serve 1 paper copy of the excerpts on any other party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If appellant is exempt from the electronic filing requirement, appellant shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties. (*Rev. 12/1/09; 3/23/16; 12/1/19*)

### **Cross Reference:**

- Circuit Rule 25-5. Electronic Filing on page **Error! Bookmark not defined.**, specifically, Circuit Rule 25-5(a), Parties exempt from electronic filing requirement.

### **30-1.4. Required Contents of the Excerpts of Record**

- (a) In all appeals, the excerpts of record shall include:
- (i) the notice of appeal;
  - (ii) the trial court docket sheet;
  - (iii) the judgment or interlocutory order appealed from;
  - (iv) any opinion, findings of fact or conclusions of law relating to the judgment or order appealed from;
  - (v) any other orders or rulings, including minute orders, sought to be reviewed;
  - (vi) any jury instruction given or refused which presents an issue on appeal;
  - (vii) except as provided in Circuit Rule 30-1.4(b)(ii), where an issue on appeal is based upon a challenge to the admission or exclusion of evidence, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the evidence, offer of proof, ruling or order, and objections at issue;
  - (viii) except as provided in Circuit Rule 30-1.4(b)(ii), where an issue on appeal is based upon a challenge to any other ruling, order, finding of fact, or conclusion of law, and that ruling, order, finding or conclusion was delivered orally, that specific portion of the reporter's transcript recording any discussion by court or counsel in which the assignment of error is alleged to rest;
  - (ix) where an issue on appeal is based upon a challenge to the allowance or rejection of jury instructions, that specific portion of the reporter's transcript recording any discussion by court or counsel involving the instructions at issue, including the ruling or order, and objections;
  - (x) where an issue on appeal is based on written exhibits (including affidavits), those specific portions of the exhibits necessary to resolve the issue; and
  - (xi) any other specific portions of any documents in the record that are cited in appellant's briefs and necessary to the resolution of an issue on appeal.
- (b) In addition to the items required by Circuit Rule 30-1.4(a), in all criminal appeals and motions for relief under 28 U.S.C. § 2255, the excerpts of record shall also include:
- (i) the final indictment; and



- (ii) where an issue on appeal concerns matters raised at a suppression hearing, change of plea hearing or sentencing hearing, the relevant portions of reporter's transcript of that hearing.
- (c) In addition to the items required by Circuit Rule 30-1.4(a), in civil appeals the excerpts of record shall also include: *(Rev. 7/1/03)*
  - (i) the final pretrial order, or, if the final pretrial order does not set out the issues to be tried, the final complaint and answer, petition and response, or other pleadings setting out those issues, and;
  - (ii) where the appeal is from the grant or denial of a motion, those specific portions of any affidavits, declarations, exhibits or similar attachments submitted in support of or in opposition to the motion that are essential to the resolution of an issue on appeal; and
  - (iii) where the appeal is from a district court order reviewing an agency's benefits determination, the entire reporter's transcript of proceedings before the administrative law judge if such transcript was filed with the district court. *(New 7/1/03)*

**Cross Reference:**

- Circuit Rule 28-2. Contents of Briefs on page **Error! Bookmark not defined.**, specifically, 28-2.5. Reviewability and Standard of Review on page **Error! Bookmark not defined.**

**30-1.5. Items Not to Be Included in the Excerpts of Record**

The excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor. The presentence report, documents attached to the report, and any sentencing memoranda filed under seal in the district court shall not be included in the excerpts of record. *See Cir. R. 27-13(d). (Rev. 3/23/16)*

**Cross Reference:**

- Circuit Rule 30-2. Sanctions for Failure to Comply with Circuit Rule 30-1 on page **Error! Bookmark not defined.**

**30-1.6. Format of Excerpts of Record**

- (a) **Excerpts of record that exceed 75 pages**

The first volume of the excerpts of record shall be limited to specific portions of the transcript containing any oral statements of decisions, the orders to be reviewed, any reports, opinions, memoranda or findings of fact or conclusions of law prepared by the district, magistrate, bankruptcy judge, bankruptcy appellate panel, and, in proceedings governed by 28 U.S.C. § 2254, the state reviewing court disposition, that relate to the issues being appealed. All additional documents shall be included in subsequent volumes of the excerpts. The documents in the first volume of the excerpts normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. The documents in subsequent volumes also normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter's transcripts or portions thereof shall be placed according to the date of the hearing. The trial court docket shall always be the last document in the excerpts. The paper copies of the excerpts are to be reproduced on letter size light paper by any duplicating or copying process capable of producing a clear black image. Each copy must be securely bound on the left side and must have a white cover styled as described in FRAP 32(a), except that the wording "Excerpts of Record" shall be substituted for "Brief of Appellant." The cover shall include the volume number. The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of the documents in the clerk's record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. The excerpts shall be filed in multiple volumes, with each volume containing three hundred (300) pages or fewer. (*Rev. 7/1/98; 12/02; 7/1/07; 12/1/09; 12/1/19*)

**(b) Excerpts of Record that do not exceed 75 pages**

The documents in the excerpts normally shall be arranged by file date in chronological order beginning with the document with the most recent file date. Reporter's transcripts or portions thereof shall be placed according to the date of the hearing. The document with the most recent file date should appear under the first tab or should be paginated beginning with page 1. The trial court docket shall always be the last document in the excerpts. The paper copies of the excerpts are to be reproduced on letter size light paper by any duplicating or copying process capable of producing a clear black image. Each copy must be securely bound on the left side and must have a white cover styled as described in FRAP 32(a), except that the wording "Excerpts of Record" shall be substituted for "Brief of Appellant." The excerpts must be either consecutively paginated beginning with page 1, or the documents marked with tabs corresponding to the tab number, if any, of

the documents in the clerk's record. If tabs are used, the pages within the tabs must be consecutively paginated. The excerpts must begin with an index organized in the order the documents are presented describing the documents, exhibits and portions of the reporter's transcript contained therein, the location where the documents and exhibits may be found in the district court record, and the page where the documents, exhibits or transcript portions may be found in the excerpts. (Rev. 7/1/98, 12/02, 7/1/07; 12/1/09; 12/1/19)

(c) **Excerpts of Record that include materials to be sealed**

When the excerpts of record include documents: (1) required to be sealed pursuant to statute or rule and submitted under Ninth Circuit Rule 27-13(d); or (2) that are being submitted provisionally under seal pursuant to Ninth Circuit Rule 27-13(e) or (f); those documents shall be submitted in a separate, final volume of the excerpts. That volume is exempt from the chronological sequence set forth in subsections (a) and (b). If the prior volumes of the excerpts are consecutively paginated, that pagination shall continue in the final separate volume. (Rev. 3/23/16)

(d) **Double-Sided Excerpts of Record**

(e) The paper copies of any kind of excerpts of record may be printed on both sides of the paper, but only when the method of binding allows each volume to lie completely flat when open, such as comb, spiral, coil, or wire binding. In addition, the weight of the paper must be sufficient to prevent bleeding through when marked on one side in ink or highlighter. (New 12/1/19)

**Cross Reference:**

- Circuit Rule 27-13. Sealed Documents on page **Error! Bookmark not defined.**, specifically, Circuit Rule 27-13(c), Form of Documents

*CIRCUIT ADVISORY COMMITTEE NOTE TO RULE 30-1.6*

*Although presentation of the excerpts' contents in chronological order is the customary method to proffer the documents, the parties may employ an alternative method of organization if that method seems better suited to the arguments offered in the brief. (New 7/1/07)*

**30-1.7. Appellee's Supplemental Excerpts of Record**

If appellee believes that the excerpts of record filed by appellant exclude items which are required under this rule, or if argument in the answering brief requires review of portions of the reporter's transcript or other documents not included by appellant in the excerpts, appellee shall, unless exempt pursuant to Circuit Rule 30-1.2, at the time appellee's brief is submitted, submit supplemental excerpts of

record, prepared pursuant to this rule, comprised of the omitted items. The supplemental excerpts shall be separate from the brief and submitted electronically unless appellee is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, appellee shall serve one paper copy of the supplemental excerpts of record on any other party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If appellee is exempt from the electronic filing requirement, appellee shall file the 4 paper copies of the supplemental excerpts at the time the brief is submitted, bound separately from the brief, and serve one paper copy on each of the other parties. (*Rev. 12/1/09, 3/23/16*)

If appellant did not file excerpts of record under subsection 30-1.3 of this rule, the contents of appellee's supplemental excerpts are limited to the district court docket sheet, the notice of appeal, the judgment or order appealed from, and any specific portions of the record cited in appellee's brief. (*New 1/1/05*)

#### **Cross Reference:**

- Circuit Rule 25-5. Electronic Filing on page **Error! Bookmark not defined.**, specifically, Circuit Rule 25-5(a), Parties exempt from electronic filing requirement

#### **30-1.8. Further Excerpts of Record**

- (a) If the reply brief requires review of portions of the reporter's transcript or other documents not included in the previously filed excerpts, appellant shall, unless exempt pursuant to Circuit Rule 30-1.2, at the time the reply brief is submitted, submit further excerpts of record. The further excerpts shall be separate from the brief and submitted electronically unless appellant is exempt from the electronic filing requirement. On the same day the further excerpts are submitted electronically, appellant shall serve 1 paper copy of such excerpts of record on any other party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If appellant is exempt from the electronic filing requirement, appellant shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties. (*Rev. 12/1/09, 3/23/16; 12/1/19*)
- (b) If a supplemental brief filed pursuant to court order requires review of portions of the reporter's transcript or other documents not included in any previously filed excerpts, the party filing the supplemental brief, shall, at the time the supplemental brief is submitted, submit further excerpts of record. The further excerpts shall be separate from the brief and submitted electronically unless the filing party is exempt from the electronic filing requirement. On the same day the excerpts are submitted electronically, the filing party shall serve 1 paper copy of such excerpts of record on any other

party that is not registered for electronic filing, but shall defer submission of the paper copies of the excerpts to the Court until directed by the Clerk to do so. If the filing party is exempt from the electronic filing requirement, the party shall file 3 paper copies of the excerpts at the time the brief is submitted, bound separately from the brief, and serve 1 paper copy on each of the other parties. (*Eff.* 7/1/98; *Rev.* 12/1/09, 3/23/16; 12/1/19)

**Cross Reference:**

- Circuit Rule 25-5. Electronic Filing on page **Error! Bookmark not defined.**, specifically, Circuit Rule 25-5(a), Parties exempt from electronic filing requirement

**30-1.9. Additional Copies of the Excerpts of Record**

Should the Court of Appeals consider a case en banc, the Clerk of the Court of Appeals will require counsel to submit an additional 10 copies of the excerpts of record. (*Rev.* 12/1/19)

**30-1.10. Presentence Reports**

*[Abrogated 3/23/16]*